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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TERRY COUR II, individually and on behalf
of all others similarly situated,

Case No. 3:16-cv-00805-TEH

**DEFENDANT'S MOTION FOR
ATTORNEYS' FEES AND COSTS
PURSUANT TO 28 U.S.C. § 1927
AND/OR THE COURT'S INHERENT
AUTHORITY, AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

CLASS ACTION

Hearing Date: June 6, 2016

Time: 10:00 a.m.

Courtroom: 2

****REDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED****

TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION.....	1
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
PRELIMINARY STATEMENT.....	1
STATEMENT OF ISSUE TO BE DECIDED.....	3
STATEMENT OF FACTS	3
I. STANDARD.....	6
II. LIFE360 SHOULD BE AWARDED ITS FEES AND COSTS IN RESPONDING TO THE COMPLAINT, WHICH WAS BROUGHT VEXATIOUSLY AND IN BAD FAITH.....	7
CONCLUSION	10

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991)	7
<i>Chargualaf v. Winkler</i> , 792 F.2d 858 (9th Cir. 1986).....	7
<i>Edgerly v. City and Cnty. of San Francisco</i> , No. C 03-02169 WHA, 2005 WL 235710 (N.D. Cal. Feb. 1, 2005)	7
<i>Faurie v. Berkeley Unified School Dist.</i> , No. C 08-0060 THE, 2008 WL 1886011 (N.D. Cal. Apr. 25, 2008) (Henderson, J.)	7
<i>Fink v. Gomez</i> , 239 F.3d 989 (9th Cir. 2001).....	7
<i>Glauser v. GroupMe, Inc.</i> , No C 11-2584 PJH, 2015 WL 475111 (N.D. Cal. Feb. 4, 2015)	9
<i>Johnson v. Univ. of Rochester Med. Ctr.</i> , 642 F.3d 121 (2d Cir. 2011).....	10
<i>McKenna v. WhisperText</i> , No. 5:14-cv-00424-PSG, 2015 WL 5264750 (N.D. Cal. Sept. 9, 2015)	4,9
<i>O'Connor v. Trans Union, LLC</i> , No. 05-cv-74498, 2008 WL 4910670 (E.D. Mich. Nov. 13, 2008).....	10
<i>Yue v. Storage Tech. Corp.</i> , No. C07-05850 MJJ, 2008 WL 361142 (N.D. Cal. Feb. 11, 2008)	6,7
STATUTES	
28 U.S.C. § 1927	1,3,6,7
Telephone Consumer Protection Act	<i>passim</i>
California Public Utilities Code and the Telephone Records and Privacy Protection Act of 2006.....	5
California Unfair Competition Law	4
RULES	
Federal Rule of Civil Procedure 11	5

NOTICE OF MOTION AND MOTION

2 NOTICE IS HEREBY GIVEN that, on June 6, 2016 at 10:00 a.m., or as soon thereafter as
3 counsel may be heard, in the Courtroom of the Honorable Thelton E. Henderson, United States
4 District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate
5 Avenue, San Francisco, California 94102, Defendant Life360, Inc. (“Life360”) will and hereby
6 does move the Court for an order, pursuant to 28 U.S.C. § 1927 and/or the Court’s inherent power
7 to levy sanctions where a party or his counsel has acted in bad faith and/or engaged in vexatious
8 litigation, awarding Life360 all of its attorneys’ fees and costs in responding to Plaintiff’s
9 Complaint. This motion is based on this Notice of Motion, the following Memorandum of Points
10 and Authorities, the Declaration of Christopher Hulls (the “May 2 Hulls Decl.”), the Declaration
11 of Gregory D. Beaman (the “May 2 Beaman Decl.”) and accompanying exhibits, the Request for
12 Judicial Notice and accompanying exhibits, argument of counsel, all pleadings, records and
13 papers on file, and such other matters that may be presented to the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

16 Life360 does not bring this motion lightly, but having tried to work through the issues
17 raised here with counsel for Plaintiff on several occasions to no avail, Life360 is left with little
18 choice but to seek relief from the Court. The gravamen of Plaintiff's Complaint is that Life360,
19 through its popular smartphone application (the "Life360 App" or "App"), allegedly sends
20 unsolicited text messages to users' contacts, and does so exclusively on its own without initiation
21 by the App's users, in violation of the Telephone Consumer Protection Act ("TCPA"). That is
22 not, however, how the Life360 App works and counsel for Life360 endeavored to explain that to
23 Plaintiff's counsel at the inception of the case, which counsel roundly rejected. Instead, counsel
24 for Plaintiff refused to withdraw the Complaint, stated that he would only accept a significant
25 class settlement, and threatened that it was "gut check" time for Life360.

Upon investigating the specific allegations in the Complaint, Life360 observed that a family member of Plaintiff's had sent the seemingly offending text, and it was not "spam," as indicated in the Complaint. Life360 further noted that [REDACTED]

1 [REDACTED] ten days before the allegedly
 2 offending text at issue here was sent to Plaintiff, and two weeks before filing the instant law suit.
 3 Indeed, Life360's business records reveal the following sequence of events:

- 4 • **Wednesday, February 3, 2016 –** [REDACTED].
 5
 6 • **Saturday, February 13, 2016** – Plaintiff's family member sends him a text
 7 message invitation through the App.
 8 • **Wednesday, February 17, 2016** – Plaintiff's counsel files suit on behalf of
 9 Plaintiff.

10 Having [REDACTED] prior to Plaintiff's receipt of the allegedly offending text,
 11 Plaintiff's counsel had direct knowledge of the fact that users of the App initiate text message
 12 invitations, not Life360. Yet, the Complaint incorrectly alleges that Life360, and not one of its
 13 users, sent Plaintiff unsolicited text messages in violation of the TCPA because, *inter alia*, (i) "the
 14 promotional text message calls alleged herein were exclusively initiated by [Life360] and not by
 15 any consumer" (Compl. ¶ 17 (emphasis added)), and (ii) the Life360 App sends text messages to
 users' contacts *without human intervention* (*id.* ¶ 16).

16 Once again, counsel for Life360 reached out to counsel for Plaintiff to reiterate that the
 17 App does not unilaterally send unauthorized text messages as described in the Complaint, and
 18 also shared the fact that it became aware that [REDACTED] before filing suit
 19 and therefore knew first-hand how the App works. Given that counsel for Plaintiff made
 20 representations in the Complaint to the contrary, counsel for Life360 urged Plaintiff to withdraw
 21 his Complaint given that the Life360 App does not initiate text messages and does not use an
 22 automated telephone dialing system, as required to state a TCPA claim. Counsel for Plaintiff
 23 refused. Accordingly, Life360 moved to dismiss Plaintiff's claims on the grounds previously
 24 discussed with Plaintiff's counsel.

25 Counsel for Plaintiff then followed up with a letter to Life360's counsel in which he
 26 threatened potential privacy claims against Life360 and its counsel. Because Life360 does not
 27 bring this motion lightly, its counsel reached out to Life360's counsel one more time before filing
 28 this motion in an effort to resolve these issues without the need for further litigation. Plaintiff's

1 counsel was unmoved by the issues raised herein.

2 Because Plaintiff's counsel knew how the App works, inaccurately presented those facts
 3 in the Complaint, and then refused to withdraw the Complaint when confronted with those facts,
 4 Life360 needlessly incurred attorney's fees and costs in responding to the Complaint. Plaintiff's
 5 counsel's conduct, moreover, has not been in good faith and has further unnecessarily added
 6 expense to Life360's defense of this case. Accordingly, Life360 respectfully requests an award
 7 of fees and costs in defending this unmeritorious and vexatious action.

8 **STATEMENT OF ISSUE TO BE DECIDED**

9 Whether Life360 is entitled to an award of its attorneys' fees and costs, pursuant to 28
 10 U.S.C. § 1927 and/or the Court's inherent authority to levy sanctions against a party and/or his
 11 counsel for bad faith conduct, because Plaintiff's counsel: (i) knowingly misrepresented the facts
 12 in the Complaint; (ii) vexatiously continues to prosecute this frivolous lawsuit against Life360
 13 despite counsel's personal knowledge of facts demonstrating that Plaintiff's claims have no basis
 14 in law or fact; and (iii) has threatened baseless privacy claims against Life360 and its counsel.

15 **STATEMENT OF FACTS**

16 Life360's business records reveal that, on February 3, 2016, an account was created with
 17 Life360 under the user name [REDACTED] May 2 Hulls Decl. ¶ 2. The phone number provided by
 18 the [REDACTED] user when opening the account was [REDACTED] *Id.* Based upon publicly-
 19 available information, that phone number belongs to [REDACTED], a company run by
 20 [REDACTED]
 21 May 2 Beaman Decl., Ex. 2. Shortly after creating the [REDACTED] account, the [REDACTED] user
 22 created the [REDACTED] family circle and sent an invitation to a contact whose phone number is
 23 [REDACTED]. May 2 Hulls Decl. ¶ 2. [REDACTED]
 24 [REDACTED]. May 2 Beaman Decl. ¶ 4. The [REDACTED] user did not invite any of his other contacts
 25 and therefore no text message invitations were sent to any of the [REDACTED] user's contacts other
 26 than [REDACTED]. May 2 Hulls Decl. ¶ 2

27 Minutes after inviting [REDACTED] to join Life360, the [REDACTED] user deleted his Life360
 28 account and created a new account under the user name [REDACTED] and a new circle named

1 the [REDACTED] See May 2 Hulls Decl. ¶ 2. The [REDACTED] user then invited two other
 2 people to join the [REDACTED] circle. See *id.* [REDACTED]
 3 [REDACTED], also downloaded the App on February 3, 2016, and sent
 4 a text message invitation to another person. See *id.* ¶ 3. [REDACTED] did not invite any of his
 5 other contacts, and therefore no text message invitations were sent to any of his contacts other
 6 than the specific contact he selected. See *id.*

7 On February 13, 2016, ten days after [REDACTED]
 8 [REDACTED], Plaintiff's own family member sent an invitation to Plaintiff, Terry
 9 (aka, "TJ") Cour, to join the App. See Declaration of Christopher Hulls dated April 21, 2016
 10 [ECF No. 20-13] (the "April 21 Hulls Decl.") ¶ 12. On information and belief, this invitation to
 11 Plaintiff is reflected in the text message invitation that Plaintiff quotes and provides a screenshot
 12 of in the Complaint. See Compl. ¶ 21 & Figure 1; *see also* April 21 Hulls Decl. ¶ 12 & Ex. 7.

13 Four days after Plaintiff was sent the invitational text, on February 17, 2016, Plaintiff's
 14 counsel filed the Complaint on behalf of Plaintiff, unequivocally contending that the Life360 App
 15 sends unsolicited, unauthorized text messages to App users' contacts in violation of the TCPA
 16 and California Unfair Competition Law. More specifically, the Complaint takes the position that:
 17 (i) "the promotional text message calls alleged herein were exclusively made and initiated by
 18 Defendant and not by any consumer" (Compl. ¶ 17); and (ii) "Life360 alone has control over . . .
 19 the timing for [invitational text messages'] transmission" (*id.* ¶ 15).

20 On April 13, 2016, counsel for Life360 called Mr. Scharg to introduce themselves and
 21 discuss Plaintiff's claims generally. See May 2 Beaman Decl. ¶ 5.¹ At the time of that call,
 22 Life360 and its counsel were unaware of [REDACTED].
 23 See *id.* Counsel for Life360 advised Mr. Scharg that Life360 intended to move for dismissal of
 24 the Complaint on the ground that Plaintiff's claims lacked merit under authority of the Federal
 25 Communications Commission ("FCC") and this Circuit because users of the Life360 App must
 26 select whom they wish to have an invitation sent to before any text message invitations will be
 27 sent to their contacts. See *id.*

28 ¹ Several associates from the Edelson firm joined Mr. Scharg on the call. See *id.*

1 Mr. Scharg disagreed, explaining that his firm had investigated the functions of the App,
 2 which, Mr. Scharg stated, is similar to the “Glide app” that the FCC found violated the TCPA.
 3 *See* May 2 Beaman Decl. ¶ 5. In response, counsel for Life360 provided Mr. Scharg with the
 4 citation to *McKenna v. WhisperText*, No. 5:14-cv-00424-PSG, 2015 WL 5264750 (N.D. Cal.
 5 Sept. 9, 2015), in which this District recently held that an application which is indistinguishable
 6 from the Life360 App did not violate the TCPA. *See id.* Counsel for Life360 also explained their
 7 understanding of the functions of the App, at which point Mr. Scharg suggested to counsel for
 8 Life360 that they and Life360 needed to do a “gut check,” and stated that he would not be
 9 dismissing the case absent a class settlement. *See id.* Mr. Scharg concluded by stating that if
 10 counsel for Life360 learned any additional information, further discussions would be welcomed.

11 After learning that [REDACTED] as described above (*see supra* at 2-
 12 3), Life360’s counsel placed a follow-up call to Mr. Scharg on April 20, 2016. *See* May 2
 13 Beaman Decl. ¶ 6. On that call, Life360’s counsel again advised Mr. Scharg that Life360 would
 14 be seeking dismissal of the Complaint and explained the basis for Life360’s amply-supported
 15 position that Plaintiff’s claims lack merit and should be voluntarily dismissed. *See id.* Mr.
 16 Scharg rejected this analysis and, again, insisted that this case is no different than “the Glide
 17 case.” *See id.*

18 Life360’s counsel also advised Mr. Scharg that Life360 had recently learned that
 19 [REDACTED] prior to filing the Complaint, which
 20 would have demonstrated to them that text message invitations sent by the App are not
 21 exclusively initiated by Life360, contrary to what is alleged in the Complaint. *See* May 2
 22 Beaman Decl. ¶ 6. Mr. Scharg asked if Life360’s counsel was suggesting that he violated Federal
 23 Rule of Civil Procedure 11 in filing the Complaint, and Life360’s counsel explained that he was
 24 not suggesting anything one way or the other, but rather was simply explaining to Mr. Scharg
 25 what was known about [REDACTED] on February 3, 2016. *See*
 26 *id.* When Life360’s counsel suggested that, based on the law and facts, Plaintiff simply had “the
 27 wrong defendant” here, Mr. Scharg replied, “I doubt it.” *Id.* Life360 was therefore forced to file
 28 its Motion on April 21, 2016.

1 Mr. Scharg then followed up with a letter to Life360's counsel on April 25, 2016 in which
 2 he contended a breach of Life360's Privacy Policy and violation of his privacy rights under the
 3 California Public Utilities Code and the Telephone Records and Privacy Protection Act of 2006.
 4 *See May 2 Beaman Decl., Ex. 3.* Mr. Scharg also argued that Life360's counsel had violated
 5 certain ethical rules, relying on a clearly inapposite case that has absolutely no bearing on the
 6 facts at issue here. *See id.*

7 Before filing this motion, Life360's counsel followed up one more time with counsel for
 8 Plaintiff on April 28, 2016 in an effort to avoid the need to bring this motion. *See May 2 Beaman*
 9 *Decl. ¶ 8.* Plaintiff's counsel conceded that they investigated the App and knew how it worked
 10 before filing the Complaint, but argued that Plaintiff's claims had not been brought in bad faith
 11 because, according to their theory, users are not told that text messages will be sent via text
 12 message and Life360 alone has control over the timing of when invitations will be sent. *See id.*,
 13 Ex. 4. However, Plaintiff's counsel then followed up with an email later that day indicating that
 14 they were interested in knowing whether Life360 had information that the family member who
 15 initiated the text message at issue to Plaintiff knew that invitations were sent by text at the time
 16 she invited Plaintiff, which, Plaintiff's counsel indicated, may make them reconsider pursuing
 17 Plaintiff's claims. *See id.*, Ex. 5. Life360's counsel responded with a letter the next day
 18 explaining that Plaintiff's inviter's knowledge was legally irrelevant under the TCPA and, in any
 19 event, if Plaintiff's counsel believed that such knowledge was legally relevant, they had a duty to
 20 investigate this issue before filing the Complaint or, at the very least, after Life360 informed them
 21 that it was Plaintiff's family member who initiated the text message to Plaintiff. *See id.*, Ex. 6. In
 22 that letter, Life360's counsel requested that counsel for Plaintiff indicate by close of business on
 23 April 28, 2016 whether they would agree to withdraw Plaintiff's unmeritorious Complaint. *See*
 24 *id.* They did not respond.

25 **I. STANDARD**

26 "Any attorney or other person admitted to conduct cases in any court of the United States .
 27 . . who so multiplies the proceedings in any case unreasonably and vexatiously and may be
 28 required by the court to satisfy personally the excess costs, expenses and attorney's fees

1 reasonably incurred because of such conduct.” 28 U.S.C. § 1927. “Under § 1927, a litigant’s
 2 recklessness, rather than bad faith, is sufficient to justify an imposition of sanctions.” *Yue v.*
 3 *Storage Tech. Corp.*, No. C07-05850 MJJ, 2008 WL 361142, at *2 (N.D. Cal. Feb. 11, 2008)
 4 (citing *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir. 2001)). Thus, “sanctions are appropriate
 5 ‘when an attorney knowingly or recklessly raises a frivolous argument . . . or argues a meritorious
 6 claim for the purpose of harassing an opponent.’” *Edgerly v. City and Cnty. of San Francisco*,
 7 No. C 03-02169 WHA, 2005 WL 235710, at *3 (N.D. Cal. Feb. 1, 2005) (quoting *Chargualaf v.*
 8 *Winkler*, 792 F.2d 858, 860 (9th Cir. 1986)). The award of attorneys’ fees under § 1927 is
 9 “intended to serve as a sanction against counsel personally for reckless or bad faith conduct in the
 10 course of litigation.” *Yue*, 2008 WL 361142, at *2 (citation omitted).

11 In addition, federal courts have the inherent power to sanction a party for bad faith
 12 conduct related to initiating and conducting litigation. *See Chambers v. NASCO, Inc.*, 501 U.S.
 13 32, 45-46 (1991); *see also Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001); *Faurie v. Berkeley*
 14 *Unified School Dist.*, No. C 08-0060 THE, 2008 WL 1886011, at *3 (N.D. Cal. Apr. 25, 2008)
 15 (Henderson, J.). This power is entrenched in the courts’ well-established equitable authority “to
 16 award expenses, including attorneys’ fees, to a litigant whose opponent acts in bad faith in
 17 instituting or conducting litigation.” *Chambers*, 501 U.S. at 48. While certain statutes and rules
 18 also authorize the imposition of sanctions for similar offenses, “[t]hese other mechanisms, taken
 19 alone or together, are not substitutes for the inherent power, for that power is both broader and
 20 narrower than other means of imposing sanctions.” *Id.* at 46. The Ninth Circuit has held that an
 21 attorney’s reckless misstatements of law and fact, when coupled with an additional factor such as
 22 frivolousness, harassment, or an improper purpose, “are sanctionable under a court’s inherent
 23 power.” *Fink*, 239 F.3d at 994.

24 **II. LIFE360 SHOULD BE AWARDED ITS FEES AND COSTS IN RESPONDING TO
 25 THE COMPLAINT, WHICH WAS BROUGHT VEXATIOUSLY AND IN BAD
 26 FAITH**

27 When Plaintiff’s counsel filed the Complaint, they knew that the Life360 App does not
 28 send text message invitations to a user’s contact unless the user affirmatively selects to invite that

1 particular contact to join the App. Indeed, two weeks before filing the Complaint [REDACTED]
 2 [REDACTED] the App under the user name, [REDACTED] and affirmatively selected to
 3 have an invitation sent to [REDACTED]. *See* May 2 Hulls Decl. ¶ 2. The App did not, would not
 4 and could not have sent [REDACTED] an invitational text message absent [REDACTED] affirmative
 5 direction to send [REDACTED] an invitation. *See* April 21 Hulls Decl. ¶ 3. [REDACTED], [REDACTED]
 6 [REDACTED], also knew this to be true, as he sent an invitation to someone as well. *See*
 7 May 2 Hulls Decl. ¶ 3.

8 Despite having this first-hand knowledge from their own investigation of the App's
 9 functions, Plaintiff's counsel proceeded to file the Complaint alleging that Life360 is in violation
 10 of the TCPA and UCL because: (i) the Life360 App sends text message invitations to users'
 11 contacts that are "exclusively made and initiated by [Life360] and not by any consumer" (Compl.
 12 ¶ 17); (ii) "Life360 alone has control over . . . the timing for [invitational text messages']
 13 transmission" (*id.* ¶ 15); (iii) the App's text messages are sent without human intervention (*id.* ¶
 14 16). Plaintiff's counsel further allege in the Complaint that (i) Plaintiff initiated this suit "to seek
 15 redress for [Life360's] sending of unsolicited text message calls" (Compl. at 1), even though
 16 Plaintiff's counsel knew that it was Plaintiff's own family member who sent him the text message
 17 invitation at issue, and (ii) "[t]hrough its conduct, [Life360] has caused consumers actual harm by
 18 making the unauthorized text message calls at issue" (*id.* ¶ 19), even though Plaintiff's counsel
 19 knew that it is the conduct of the App's users, not Life360, that causes the invitational text
 20 messages to be sent. Those allegations do not hold up and Plaintiff's counsel knew this before
 21 they filed the Complaint. Nonetheless, Plaintiff's counsel has refused to withdraw the Complaint
 22 and has repeatedly insisted that Plaintiff's claims are meritorious because this case is no different
 23 from "the Glide case." *See* May 2 Beaman Decl. ¶¶ 5-6.

24 That argument, which Life360 fully expects Plaintiff's counsel to make in response to
 25 Life360's Motion, is frivolous. Mr. Scharg, who litigated a case relating to the Glide app, knows
 26 that the Glide app is materially different from the Life360 App because the Life360 App does *not*
 27 automatically spam users' contacts with text message invitations without the user's direction.
 28 The FCC found that the Glide app violated the TCPA because "Glide *automatically* sends

1 invitational texts of its own choosing to every contact in the app user's contact list with little or
 2 no obvious control by the user." RJN, Ex. 1 ¶ 35 (emphasis added). By contrast, in that same
 3 ruling the FCC ruled that the TextMe app did not violate the TCPA because it only sent text
 4 message invitations to a user's contacts after the user went through the following steps to have an
 5 invitation sent: "(1) tap a button that reads 'invite your friends,'; (2) choose whether to 'invite all
 6 their friends or [] individually select contacts;' and (3) choose to send the invitational text
 7 message by selecting another button." *Id.* ¶ 36 (alterations in original). The FCC ruled that
 8 "[t]hese affirmative choices by the app user lead us to conclude that the app user and not TextMe
 9 is the maker of the invitational text message." *Id.* ¶ 37.

10 Likewise, this District recently dismissed virtually identical TCPA claims in *WhisperText*
 11 and *Glauser v. GroupMe, Inc.*, No C 11-2584 PJH, 2015 WL 475111 (N.D. Cal. Feb. 4, 2015),
 12 because, in each case, the app required the user to take the affirmative steps of selecting which
 13 contacts to invite and expressly selecting to have invitations sent to them, which are exactly the
 14 same steps that users of the Life360 App must take to cause invitational text messages to be sent
 15 to their chosen contact. *See* April 21 Hulls Decl. ¶¶ 7-10.

16 Plaintiff's counsel knows these steps well. Ten days before Plaintiff received the
 17 allegedly offending text at issue and two weeks before commencing this lawsuit, [REDACTED]
 18 [REDACTED] and learned that the Life360 App likewise only sends text
 19 message invitations after a user taps a button granting the App access to its contacts, selects
 20 which contacts, if any, she wishes to invite, and then affirmatively chooses to invite those
 21 contacts by pressing the "invite" button. *See* April 21 Hulls Decl. ¶¶ 7-10.

22 Plaintiff's refusal to withdraw the Complaint on the basis that this case "is the Glide case"
 23 is plainly frivolous and vexatious, especially given that Plaintiff's counsel knew, before they filed
 24 the Complaint, that the App does not send text message invitations exclusively on its own without
 25 any user initiation. As a result of Plaintiff's refusal to withdraw the Complaint, Life360 has been
 26 forced to file the Motion and incur the costs of preparing that Motion, none of which Life360
 27 would have incurred had Plaintiff withdrawn his vexatious claims. Now, this Court's already-
 28 heavy docket is being further burdened by having to rule on the Motion, which clearly establishes

1 that Plaintiff's claims lack merit under governing FCC authority and case law in this District.

2 To make matters worse, in response to Life360's counsel's discussion with Plaintiff's
 3 counsel regarding [REDACTED] knowledge of how the App works, Mr. Scharg
 4 threatened possible privacy claims against Life360 and its counsel, even though their conduct in
 5 investigating the background of Plaintiff's allegations and the bad faith conduct of his counsel
 6 was entirely permissible and justified under the law and Life360's own Privacy Terms. *See* May
 7 2 Beaman Decl., Ex. 3. Indeed, contrary to Mr. Scharg's claims, Life360 was entitled to share the
 8 information in its own files concerning [REDACTED] with
 9 its counsel in order to defend against Plaintiff's frivolous, bad faith claims. The Life360 Privacy
 10 Policy makes plainly clear that Life360 may disclose users "personal information to third parties .
 11 . . if, in [Life360's] sole discretion, [Life360] determine[s] it is necessary . . . to investigate and
 12 defend [Life360] against any claims or allegations." May 2 Hulls Decl., Ex. 1 § 2.

13 Simply put, the Complaint—and this entire litigation—is premised on untrue allegations
 14 that Plaintiff's counsel knew to be untrue at the time they filed the Complaint, which they now
 15 refuse to withdraw on the basis of frivolous arguments that are contradicted by Mr. Scharg's own
 16 prior statements to the FCC. That is the hallmark of bad faith, and such conduct should not be
 17 countenanced by this Court. *See, e.g., Johnson v. Univ. of Rochester Med. Ctr.*, 642 F.3d 121,
 18 126 (2d Cir. 2011) (affirming sanction of plaintiff's counsel where counsel "pursued claims she
 19 knew had no basis in law or fact" and made "repeated allegations that the University made an
 20 unsolicited, libelous statement about Johnson to the Delaware State Medical Board when, in fact,
 21 [plaintiff's] [counsel] requested and authorized the release of the allegedly libelous statement.");
 22 *O'Connor v. Trans Union, LLC*, No. 05-cv-74498, 2008 WL 4910670, at **20-22 (E.D. Mich.
 23 Nov. 13, 2008) (sanctioning plaintiff because he was aware of facts, prior to filing the complaint,
 24 demonstrating that his claim was not viable).²

25 ² This is not the first time that Plaintiff's counsel has engaged in questionable conduct in this
 26 Circuit. Just nine days ago, Judge Percy Anderson of the United States District Court for the
 27 Central District of California found that Edelson acted in bad faith in connection with a motion
 28 for *pro hac vice* admission filed by Ari Scharg because Mr. Scharg knowingly misrepresented to
 the Court that Edelson had an office in the Central District of California, even though Edelson
 uses a "virtual office" there that is unstaffed. *See* RJN, Ex. 2.

CONCLUSION

For the foregoing reasons, Life360 respectfully requests that the Court enter an order awarding Life360 all of its attorneys' fees and costs incurred in responding to the Complaint.

Dated: May 2, 2016

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ William A. Molinski

WILLIAM A. MOLINSKI (SBN 145186)

Attorneys for Defendant Life360, Inc